

### **REMARKS/ARGUMENTS**

Claims 1-7 stand withdrawn following a previous election with traverse by Applicant. Claims 8-10 are amended herein and claim 11 is in original form. After entry of this paper, claims 1-11 remain pending in this application.

#### **Drawing Amendments**

In the Office Action, the Examiner requested amendment of Figure 2 to include sequence identifiers for all of the polypeptide sequences depicted in the sequence alignment. In response, Applicant has amended Figure 2 substantially as suggested by the Examiner. Amended Figure 2 includes no new matter and entry of amended Figure 2 (attached Replacement Sheet 1/6) is hereby requested.

#### **Requirement of Sequence Listing**

The Examiner further objected to the present specification because of various issues related to sequence disclosures made under §1.821 through 1.825. In response, applicant has amended the Brief Description of the Drawings, namely, the paragraph describing Figure 2 to now include sequence identifiers directed to all of the polypeptide sequences depicted in Figure 2. As noted in the preceding paragraph, Figure 2 itself has also been amended to depict the sequence identifiers. As well, polynucleotide sequences disclosed at page 38, lines 12-13 of the specification have now been provided sequence identifiers. Accordingly, Substitute Sheets 1-7 containing an amended written sequence listing accompany this paper and Applicant requests entry of the amended written sequence listing into the present application. No new matter has

been added to the present application by way of the amended written sequence listing. Support for the sequence information added to the written sequence listing may be found at, e.g., original Figure 2 and page 38, lines 10-20 of the as-filed specification. As well, a computer readable form (CRF) containing the amended written sequence listing accompanies this paper on a diskette along with an appropriate statement identifying the CRF as identical in content to the amended written sequence listing contained in Substitute Sheets 1-7.

### **Specification and Claim Objections**

In the Office Action, the Examiner noted various informalities related to trademark usage and the inclusion of browser-executable code. Applicant has reviewed the specification and made amendments to appropriately represent the proprietary nature of the trademarks and has deleted instances of browser-executable code.

Claim 9 was objected to in the Office Action because of an informality noted in the preamble language. In response, Applicant has replaced "A" with "The" in claim 9, as directed by the Examiner.

### **Claim rejections under 35 U.S.C. § 112, first para.**

In the Office Action, claims 8-11 were rejected under §112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner stated that the recited term "biologically active fragment thereof" was not defined in the specification by structure or function. Claims 8-11 were further rejected under §112, first paragraph, because the specification, while enabling for the AeSCP-2 protein set forth in SEQ ID NO:3, was alleged by the Examiner to not provide enablement for protein fragments thereof. In response to both of

these rejections, Applicant has deleted the term “biologically active fragment thereof” from claims 8-11. In view of Applicant’s present amendment, the rejections under § 112, paragraph 1, should be reconsidered and withdrawn by the Examiner.

**Claim rejections under 35 U.S.C. § 112, second para.**

Claims 8-11 were rejected under § 112, second paragraph, as being indefinite as to the subject matter claimed. In particular, the recited term “biologically active fragment thereof” was alleged to be indefinite in view of the rejected claim’s preamble. In response, the recited term “biologically active fragment thereof” has been deleted from claims 8-11. Claims 8 and 10 were further rejected as being indefinite because the claim did not recite the corresponding spelled out meaning of the acronym “AeSCP-2”. Applicant has now amended claims 8 and 10 to recite the spelled out acronym, support for the amendment being found throughout the specification (e.g., at pg. 1, lines 14-15).

**Claim rejections under 35 U.S.C. § 102(a)**

In the Office Action, claims 8-11 were rejected under §102(a) as being anticipated by Krebs et al. (*Insect Molecular Biology* 12: 51-60 (2003)). The Examiner has indicated this particular reference was published on February 12, 2003. Applicant wishes to point out that the present application claims the benefit of U.S. Provisional 60/465,648, filed April 25, 2003; the disclosure in the priority application is substantially similar, if not identical to, the disclosure in the cited reference. As can be appreciated, the authorship of the cited reference is identical to the inventorship in the present application. If the total identity of the authors of a publication and the inventors, respectively, of an application is apparent from the application and the publication, the fact of authorship by the inventors does not seem to be in dispute. An affidavit under 37 CFR

1.132 by the inventors in order to remove the cited reference as not "by others" consequently appears unnecessary in this situation. However, if the Examiner feels the fact of authorship is in dispute, Applicant will certainly submit a simple affidavit or declaration from Inventors Lan and Krebs stating they are, in fact, the authors of the cited reference and the relevant portions thereof are entirely attributable to them. In view of the above discussion, the rejection under § 102(a) should therefore be withdrawn.


### CONCLUSION

In light of the amendments and arguments presented herein, Applicant respectfully requests reconsideration and a timely Notice of Allowance to follow in this case. Applicant requests that the Examiner telephone the undersigned in the event a telephone discussion would be helpful in advancing the prosecution of the present case. The Commissioner is authorized to charge any additional fees or underpayment of fees regarding this response, including extensions for reply, to Deposit Account 07-1509.

Respectfully submitted,

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### **AMENDMENTS TO THE DRAWINGS**

The attached Replacement Sheet 1/6 includes changes to Figure 2, specifically the addition of sequence identifiers to all of the amino acid sequences depicted in the sequence alignment. The replacement sheet, which includes Figs. 1-2, replaces the original sheet including Figures 1-2.

Attachment: Replacement Sheet 1/6 containing amended Figure 2.